IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

THURSDAY, THE 18TH OCTOBER 2007 / 26TH ASWINA 1929

Crl.Rev.Pet.No. 3726 of 2007()

CRA.475/2005 of II ADDL. SESSIONS COURT, PALAKKAD
ST.1660/2002 of JUDL.MAGISTRATE OF FIRST CLASS COURT, MANNARKAD

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REVN. PETITIONER:

KRISHNAKUMAR, S/O.RAJAN,
PARAKKOTTIL HOUSE,
PARASERRI PO, KONGAD,
OTTAPPALAM TALUK
PALAKKAD DISTRICT

BY ADV. SRI.JIJO PAUL

RESPONDENTS:

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1. N.P.RAJAN, S/O. APPUGUPTHAN
SHRAVANAM, KARAKURISSI PO
MANNARKAD TALUK, PALAKKAD DISTRICT

2. THE STATE OF KERALA REPRESENTED BY
THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-31.

BY PUBLIC PROSECUTOR SRI.K.M.FIROZ

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 18/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 3726 OF 2007

Dated this the 18th day of October, 2007

O R D E R

In this Revision filed under Section 397 read with Sec. 401 Cr.P.C. the petitioner who was the accused in S.T. No.1660/2002 on the file of the J.F.C.M., Mannarkkad challenges the conviction entered and the sentence passed against him for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioner and the learned Public Prosecutor.

3. The learned counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the revision petitioner in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the Revision

Petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice.

4. The learned counsel for the revision petitioner made the following further submissions before me:-

When the matter was pending before the trial court, the accused had executed Annexure-A registered document on 29.9.03 assigning 10 cents of land in favour of the complainant who has paid valuable consideration for the same. If, as a matter of fact, a sum of Rs.1,00,000/- was due to the complainant under Ext.P1 cheque dated 18.6.02 the complainant would not have taken assigning of 10 cents of land again paying consideration for the same. In Annexure-B complaint dated 12.8.05 preferred by the revision petitioner before the Superintendent of Police, Palakkad he has specifically mentioned about the fact that the assignment of 10 cents of land was in discharge of his liability under Ext.P1 cheque. Such being the position, the conviction and sentence passed against the revision petitioner cannot stand.

5. I am afraid that I cannot agree with the above submissions. The borrowal was on 8.3.02 and the amount borrowed was Rs.1,00,000/-. Subsequently, on 18.6.02 Ext.P1

cheque was issued by the accused to the complainant for the sum of Rs.1,00,000/- borrowed by him. The complainant was examined as PW1 in the year 2005. If execution of Annexure-A document on 29.9.03 was in discharge of the liability under Ext.P1, one would have expected at least a suggestion to PW1 in that behalf. There was not even a whisper in that direction. As for Annexure-B complaint it is preferred after the judgment of the trial court and the averments therein are only the interested and self-serving averments made by the revision petitioner. The learned counsel appearing for the 1st respondent complainant submits that the said complaint was referred as false. Under these circumstances, it is futile for the revision petitioner to contend that the execution of the sale deed by the accused in favour of the complainant on 29.9.03 was in discharge of the liability under Ext.P1. Both the courts have considered and rejected the defence set up by the revision petitioner while entering the above finding. The said finding has been recorded on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the

petitioner.

6. What now survives for consideration is the question as to whether a proper sentence has been imposed on the Revision Petitioner. I am, however, inclined to modify the sentence imposed on the revision petitioner provided he complies with the condition hereinafter mentioned. Accordingly, if the revision petitioner pays to the 1st respondent complainant by way of compensation under section 357(3) Cr.P.C. a sum of Rs.1,00,000/- (Rupees one lakh only) within five months from today, then he need to undergo only imprisonment till the rising of the court. If on the other hand, the revision petitioner commits default in making the payment as aforesaid, he shall undergo simple imprisonment for three months by way of default sentence. Money, if any, paid by the revision petitioner pursuant to the orders, if any, passed by the lower appellate court shall be refunded to the revision petitioner.

This Revision is disposed of confirming the conviction but modifying the sentence as above.

(V. RAMKUMAR, JUDGE)

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